

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GREG MILLER, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 4:05CV1769 CDP
)	
COTTRELL, INC., et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before me on defendants' motion to modify my November 8, 2005 Order granting plaintiffs' motion for dismissal without prejudice. I granted the motion before defendants' time to respond had run, and defendants indicate that they had wished to oppose the motion. Defendants argue that plaintiffs are dismissing their case to avoid having this Court decide whether one of the defendants has been fraudulently joined to defeat federal jurisdiction, and that plaintiffs should not be allowed to start over by refileing the case in state court. They point out that numerous courts handling similar cases filed by the same lawyers had agreed with defendants' fraudulent joinder argument. In the alternative to denying plaintiffs' motion, defendants request that I impose conditions on plaintiffs' voluntary dismissal without prejudice.

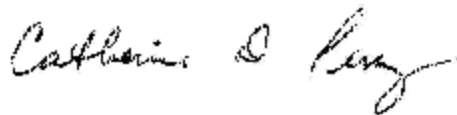
Having carefully considered defendants' motion, the procedural posture of

this case and the interests of justice, I will exercise my discretion and modify my November 8, 2005 Order of Dismissal to provide that if plaintiff should refile the case in any jurisdiction, he must pay defendants their costs and attorneys fees of defending this dismissed action, and I will retain jurisdiction of this matter only for the purpose of enforcing this order, through contempt or otherwise, should that become necessary. The remaining relief requested by defendants will be denied.

Accordingly,

IT IS HEREBY ORDERED that defendants' motion to modify the November 8, 2005 Order of Dismissal [#26] is granted only in part as described above, and is denied in all other respects.

An Amended Order of Dismissal is entered this same date.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 30th day of November, 2005.

